
In the United States 2
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of
MARGARET E. TOOHEY,
a Bankrupt.

Mazie McLeod and Edwin J. Miller,
Appellants,

vs.

Dan Boone, a petitioning Creditor, and
Hubert F. Laugharn, trustee in bank-
ruptcy,
Appellees.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

BRIEF OF APPELLEES IN SUPPORT OF
MOTION TO DISMISS APPEAL.

KENNETH E. GRANT and
GILBERT B. HUGHES,

1215 Citizens National Bank Bldg., Los Angeles,

Solicitors for Appellees.

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No. 8104

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BRIEF OF APPELLEES IN SUPPORT OF
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*To the Honorable Circuit Justice and Circuit Judges of
the United States Circuit Court of Appeals for the
Ninth Circuit:*

On special assignment by the court, appellees on February 25, 1936 in open court moved for dismissal of the appeal herein. Pursuant to the court's order appellees submit this brief in support of the motion.

Nature of the Order Appealed From.

Appellants appealed from an order of the District Court affirming an order of the referee in bankruptcy by which assignment by certain creditors of the bankrupt to Dan Boone of an interest in their claims was recognized and the allowed claims of such creditors subrogated *pro tanto* to the assignment in favor of Boone.

The instrument by which appellants, with others not complaining, transferred a portion of their respective claims to Boone appears in the transcript of record on file at pages 28 to 31 both numbers inclusive. The referee's order was made on petition of Dan Boone and after notice to each of the assigning creditors.

The proceeding was a mere step in the ordinary and routine administration of the bankrupt estate. It involved nothing more than a determination by the referee that appellants had transferred to Boone an interest in their claims against the bankrupt estate and an order to the trustee directing him to make dividend payments on allowed claims accordingly.

Basis of Appellees' Motion to Dismiss.

Appellees base their motion to dismiss the appeal on the following grounds:

1. The appeal involves a "proceeding" in bankruptcy and not a "controversy" in bankruptcy.
2. Involving a "proceeding" in bankruptcy the appeal could be taken only pursuant to the provisions of section 24b of the Bankruptcy Act, now United States Code, Tit. 11, Section 47b.
3. The appeal was allowed by the District Court and not by the Circuit Court of Appeals as required by section 24b of the Bankruptcy Act.

4. No proper appeal having been taken by appellants within the thirty-day period provided for appeal by section 24c of the Bankruptcy Act (11 U. S. C. A. section 47c) the Circuit Court of Appeals is without jurisdiction to entertain the appeal.

Law of the Case.

1. The "controversies" arising in bankruptcy referred to in section 24a of the Bankruptcy Act include those matters arising in the course of a bankruptcy proceeding which are not mere steps in the ordinary administration of the bankrupt estate, but present, by intervention or otherwise, distinct and separable issues between the trustee and adverse claimants concerning the right and title to the bankrupt's estate.

Taylor, Trustee, etc. v. Voss, Trustee, 271 U. S. 176, 46 S. Ct. 461, 70 L. Ed. 889.

Appellees respectfully submit that the routine nature of the subject matter of the order complained of clearly shows that we are not concerned with a "controversy" in bankruptcy which could be appealed to this court under section 24a of the Bankruptcy Act on allowance by the District Court. The trustee in bankruptcy was in no sense a party to the proceeding although appellants have joined him as a party to their appeal. There was no proceeding adverse to the trustee or the estate he represents. The matter involved nothing more than the question of how dividends on certain claims should be paid, *pro tanto* assignment in favor of Boone having been made by the respective creditors. The proceeding was purely routine in the administration of the estate and in no sense involved a "controversy" in bankruptcy as that expression is used in the bankruptcy law. And, again, the proceed-

ing does not fall within any of the three categories referred to in section 25 of the Bankruptcy Act, 11 U. S. C. A. section 48, where an appeal is allowed as a matter of right.

2. Since the order appealed from involved a "proceeding" in bankruptcy and not a "controversy" arising in bankruptcy proceedings, appeal could only be taken within thirty days from the date of the order complained of, by consent of the Circuit Court of Appeals.

Section 25b, *Bankruptcy Act*, 11 U. S. C. A. section 47b;

Deeley v. Cincinnati Art Pub. Co., 23 Federal Reporter (2nd) 920;

Childs v. Ultramares Corp., 40 Federal (2nd) 474;

In re Torgovnick, 49 Federal (2nd) 211;

Hirschfeld v. McKinley, 78 Federal (2nd) 124.

3. As appeal could be taken only after application to the Circuit Court of Appeals for leave, and after leave granted by said court, allowance of the appeal by the District Court is ineffective.

In re Torgovnick, 49 Federal (2nd) 211;

Broders v. Lage, 25 Federal (2nd) 288 (C. C. A. 8);

Stanley's Incorporated Store v. Earl, 25 Federal (2nd) 458 (C. C. A. 8);

American State Bank v. Ullrich, 28 Federal (2nd) 753 (C. C. A. 8);

Ahlstrom v. Ferguson, 29 Federal (2nd) 515 (C. C. A. 1);

Shoreland Co. v. Conklin, 30 Federal (2nd) 489 (C. C. A. 5);

In re Merchants' Oil Co., 36 Federal (2nd) 655
(C. C. A. 10);

Gate City Clay Co. v. Dickey, 39 Federal (2nd)
581 (C. C. A. 8).

4. The appeal not having been allowed by the Circuit Court of Appeals within the time prescribed by section 25c of the Bankruptcy Act, the court is now without jurisdiction to entertain the appeal from an order involving only a "proceeding" in bankruptcy.

Decley v. Cincinnati Art Pub. Co., 23 Federal
(2nd) 920 (C. C. A. 6).

Conclusion.

From the foregoing, appellees respectfully submit it clearly appears that the court is without jurisdiction to entertain the appeal herein and that the same should be disposed of by an order of dismissal.

Respectfully submitted,

KENNETH E. GRANT and
GILBERT B. HUGHES,

By GILBERT B. HUGHES,

Solicitors for Appellees.

